



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 16-013

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Subject: Who sets the commission rate paid to the county sheriff for collection of school taxes; whether the commission rate may be unilaterally changed by either the school board or sheriff; whether the commission rate is negotiable

Requested by: Rep. Lynn Bechler, Kentucky State Representative, 4th District

Written by: Taylor Payne, Assistant Attorney General

Syllabus: KRS 160.500 sets a sheriff's commission for collecting school taxes. A sheriff is entitled to a commission that equals the actual and reasonable expenses incurred to collect the school taxes up to an amount that does not exceed four percent (4%) of the school taxes collected.

Statutes construed: Ky. Const. § 180; Ky. Const. § 184; KRS 160.460; KRS 160.500; KRS 160.510

OAGs cited: OAG 84-325

Opinion of the Attorney General

Kentucky State Representative Lynn Bechler has requested an opinion of this office to address three issues: 1) who sets the commission rate paid to the sheriff for the collection of school taxes; 2) whether that commission rate may be unilaterally changed by either the school board or the sheriff; and 3) whether the commission rate is negotiable. To provide context for the purpose of her request, Representative Bechler informs this office that the Crittenden County School Board ("School Board") has indicated to the Crittenden County Sheriff ("Sheriff")

Board ("School Board") has indicated to the Crittenden County Sheriff ("Sheriff") that it intends to explore reducing the maximum commission rate that the Sheriff is paid for collecting taxes from four percent (4%) to one and one-half percent (1.5%).

We advise that pursuant to KRS 160.500(1), the Sheriff is entitled to a commission equal to the actual and reasonable expenses incurred in collecting the school taxes, up to an amount that does not exceed four percent (4%) of the collected school taxes.¹ We further advise that the commission may not be unilaterally changed or negotiated by either the school board or the sheriff.

As Section 184 of the Kentucky Constitution provides, a common school fund was established "for the purpose of sustaining the system of common schools." The fund, along with any sum produced by taxation, "shall be appropriated to the common schools, and to no other purpose." Ky. Const. § 184. Section 180 of the Kentucky Constitution additionally states that any tax levied by an enactment of the General Assembly or by ordinance of any county, city, town or municipal board or local legislative body "shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

Under KRS 160.460, "school taxes shall be levied by the board of education of each school district." Further, KRS 160.500(1) mandates that "[s]chool taxes shall be collected by the sheriff for county school districts" That provision also states, in part, that the sheriff:

shall be entitled to a commission equal to his or her expenses incurred in collecting the school taxes, provided that the commission shall not be less than one and one-half percent (1.5%) or more than four percent (4%) of the amount of school taxes collected[.]

KRS 160.500(1) (emphasis added). Pursuant to KRS 160.510, the Sheriff must "pay to the depository of the district board of education the amount of school tax

¹ Pursuant to KRS 160.500(1), the commission may also include up to four percent (4%) of the amount of any interest earned on the amounts collected and invested by the Sheriff prior to distributing the taxes to the school district. This portion of KRS 160.500(1) is not at issue and will not be further addressed.

collected up to and including the last day of the preceding month, except that the county clerk shall deduct his collection fee before payment to the district board of education depository."

In *Dickson v. Jefferson County Bd. of Educ.*, 225 S.W.2d 672 (Ky. 1949), Kentucky's highest court addressed whether a 1946 amendment to KRS 160.500 allotting sheriffs a fee of 4 percent for collecting school taxes would constitute a diversion of school funds in contravention of Kentucky Constitution Sections 180 and 184. Reconciling KRS 160.500 and Sections 180 and 184, the Court stated that "'a tax is not produced until it is levied and collected, and, unless plainly prohibited, the levying power may reduce the sum levied in the process of collection in order to produce the collection funds, and . . . this constitutes no misappropriation of any produced fund.'" *Dickson*, 225 S.W.2d at 674 (quoting *Board of Educ. of Louisville v. Sea, Tax Receiver*, 181 S.W. 670, 674 (Ky. 1916)). The Court held that because an element of cost is involved in the collection of taxes, Sections 180 and 184 of the Kentucky Constitution are not violated when a reasonable charge is made against a school tax for its collection. *Id.* at 625. However, the Court stressed that any amount in excess of the reasonable cost of collecting school taxes would be a diversion of money collected for the common schools in violation of Sections 180 and 184. *Id.*

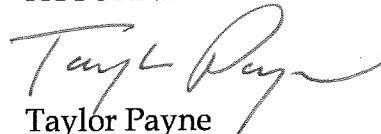
This office relied on *Dickson* in OAG 84-325, which concerned a request to provide an opinion on a 1982 amendment to KRS 160.500 that added that a sheriff's commission shall not be less than one and one-half percent (1.5%) of the collected school taxes. The office stated that "the sheriff's fee for collecting school taxes cannot exceed the reasonable cost of collecting such school taxes[]" because "any amount in excess of the actual and reasonable cost of collection would constitute a diversion of school funds." OAG 84-325. The office advised that:

Where the facts indicate that the actual and reasonable expense was something less than one and one-half percent (1 1/2%), only that lesser percentage could be paid the sheriff. Regardless of the statutory fee treatment given by the General Assembly, the sheriff's fee cannot exceed the actual and reasonable cost of collection up to a maximum of four percent (4%).

Id. The office concluded that the one and one-half percent (1.5%) figure in KRS 160.500 "is superfluous and meaningless upon practical analysis." *Id.*

In this case, the KRS 160.500(1) mandates that the Sheriff is entitled to a commission equal to the expenses incurred collecting the school taxes up to an amount that does not exceed four percent (4%) of the collected school taxes. In light of *Dickson* and OAG 84-325, the amount of expenses that equal the Sheriff's commission must be both actual and reasonable to comply with Sections 180 and 184 of the Kentucky Constitution. Therefore, any change in the Sheriff's monthly commission must be the result of a change in the actual and reasonable expenses incurred that month by the Sheriff in the collection of the school taxes. It follows that the School Board has no authority to negotiate a rate that is different than the actual and reasonable expenses incurred by the Sheriff each month. If the School Board disputes that the monthly collection fee was an actual or reasonable expense, it may seek an appropriate remedy in circuit court. See *Board of Educ. of Calloway County School Dist. v. Williams*, 930 S.W.2d 399 (Ky. 1996); *Grayson County Bd. of Educ. v. Boone*, 452 S.W.2d 371 (Ky. 1970); *Board of Educ. of Lawrence County v. Workman*, 256 S.W.2d 528 (Ky. 1953); *Board of Educ. of Madison County v. Wagers*, 239 S.W.2d 48 (Ky. 1951); *Wells v. Bd. of Educ. of Menifee County*, 244 S.W.2d 160 (Ky. 1951).

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